

SEP. 21. 2005 3:25PM

NO. 8007 P. 56

Application No.: 09/916611

Docket No.: 00306-00142-USU

EXHIBIT 2

408430

RECEIVED
CENTRAL FAX CENTER

SEP 21 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Johnnie R. Roberts et al.

Application No.: 09/916611

Confirmation No.: 8709

Filed: July 27, 2001

Art Unit: 1616

For: MANUFACTURE AND USE OF A
HERBICIDE FORMULATION

Examiner: A. N. Pryor

37 CFR 1.132 DECLARATION

1. I am one of the inventors of the above referenced application. I am employed by Helena Chemical Company as a Manager of the Product Development Laboratory in Memphis, Tennessee. A copy of my most recent Curriculum Vitae is attached as Appendix A. In view of the above qualifications, I consider myself an expert in the field of agricultural compositions.
2. I have reviewed the office action which was mailed on November 30, 2004. The examiner has rejected the claims based on composition of AF-300. I have also reviewed and am familiar with AF-300 along with the above identified application.
3. The composition of AF-300 is found on their Material Safety Data Sheet ("MSDS"). MSDS sheet, dated January 2002 (see Appendix 1).

This MSDS sheet shows the following composition:

2,4-Dichlorophenoxy acetic acid at 300 grams per liter
Synthetic ethoxylated alcohol at 50%
Solvent 400 at 235 grams per liter.

4. Since the MSDS and other literature describe this product as containing kerosene (see page 3 under the heading of the subheading of proper Shipping under the heading of Storage and Transport), it is assumed that Solvent 400 is kerosene or contains a significant level of kerosene. The Solvent 400 is present in 235 grams per liter.

5. The use of kerosene in this large amount (Solvent 400 is 235 grams per liter) significantly affects the benefits of the inventive formulation.

A. Kerosene is flammable and therefore poses several problems such as with shipping and handling.

B. Kerosene has a very noticeable and objectionable odor. Because 2,4-D esters are frequently applied in conjunction with kerosene, this would be a liability as compared with the inventive formulations which exhibit virtually no odor.

C. Kerosene poses a potential inhalation hazard. (See AF-300 MSDS sheet under Acute - Inhaled hazards).

D. Kerosene will likely cause deterioration of spray application equipment.

6. Further evidence that kerosene causes problems is that Agricrop Affray 300 Herbicide's formulation was changed February 3, 2003 (see Appendix 2). According to the new February 3, 2003 MSDS, Agricrop's AF 300 herbicide, has replaced the kerosene (Solvent 400) with Solvesso 150. Therefore, the new formulation is now non-flammable because of the replacement of kerosene with Solvesso 150. Solvesso 150 is a solvent that is naphtha, petroleum, heavy aromatic RN: 64742-94-5. This is further evidence of the negatives of kerosene.

7. For the above stated reasons, I believe that significant amounts of kerosene (Solvent 400 at 235 grams per liter) would have a substantial negative impact on the claimed formulations.

8. I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

02-03-05

Date


Johnnie R. Roberts